

**BY ORDER OF THE  
SECRETARY OF THE AIR FORCE**

**AIR FORCE INSTRUCTION 51-1001**

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**Law**

**DELIVERY OF PERSONNEL TO UNITED  
STATES CIVILIAN AUTHORITIES FOR  
TRIAL**

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This instruction establishes procedures for making Air Force members, civilian personnel, and family members available to US civilian authorities for trial or specified court appearances. It implements Department of Defense (DoD) Instruction 5525.09, *Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders*, 10 February 2006; DoD Instruction 5525.11, *Criminal Jurisdiction Over Civilians Employed By or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members*, 3 March 2005; Directive-Type Memorandum (DTM) 09-015, *Policy and Procedures Applicable to DoD and United States Coast Guard (USCG) Civilian Personnel Subject to the Uniform Code of Military Justice (UCMJ) Jurisdiction in Time of Declared War or a Contingency Operation*, 16 February 2010; AFD 51-10, *Making Military Personnel, Employees, and Dependents Available to Civilian Authorities* and Air Force Joint Instruction (AFJI) 51-707, 5 November 1968, *Consular Protection of Foreign Nationals Subject to the Uniform Code of Military Justice*. This directive applies to all Air Force military personnel, including reserve members while on active or inactive duty training and Air National Guard members while in Federal status; Department of the Air Force civilian employees (including nonappropriated fund employees); DoD civilian employees, DoD contractor personnel, and other persons serving with or accompanying the armed forces overseas during declared war and in contingency operations; and all dependents. This instruction does not confer any rights, benefits, privileges, or form of due process procedure upon any individuals. Send all recommended changes or comments about this publication to AFLOA/JAJM, 1500 West Perimeter Road, Suite 1130, Joint Base Andrews Navy Air Facility Washington, MD 20762, through appropriate channels, using AF Form 847, *Recommendation for Change of Publication*. Ensure that all

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## ***SUMMARY OF CHANGES***

This interim change implements DoD policy concerning UCMJ jurisdiction over persons serving with or accompanying the armed forces. Changes also include updates to organizational mailing addresses. A margin bar indicates newly revised material.

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***Section A—Procedures for Individuals Wanted by Federal or State Authorities for Crimes Allegedly Committed within CONUS.***

**1. Authority.**

1.1. Approval. A general court-martial convening authority (GCMCA) may authorize delivery of a military member subject to his or her command to Federal, state, or local civilian authorities that request the member in the enforcement of an order issued by a Federal or state court of competent jurisdiction.

1.1.1. Military members include active duty, Reserve members on active or inactive duty training, or Air National Guard members while in Federal (Title 10, U.S.C.) status.

1.1.2. The Federal, state, or local civilian authorities and the Federal or state court of competent jurisdiction must be of the United States, District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, the United States Virgin Islands, or any commonwealth, territory, possession, or insular area of the United States.

1.1.3. The GCMCA may delegate approval authority to an installation or equivalent commander.

1.1.4. On or before delivery, the commander authorizing the delivery will provide to the military member an Instruction Letter in substantially the form set out at [Attachment 1](#). A copy of the Instruction Letter will be provided to the requesting civilian authorities and the Air Force unit, activity, or recruiting office designated in the Instruction Letter.

1.1.5. On or before delivery, the commander authorizing the delivery will work with the servicing Staff Judge Advocate (SJA) and Military Personnel Flight (MPF) to determine the appropriate duty status for the member and the appropriate Personnel Tempo Code for any orders issued. Coordinate with the Air Force Personnel Center, Directorate of Assignments (AFPC/DPA) and Air Force Legal Operations Agency, Military Justice Division (AFLOA/JAJM).

1.2. Denial for return of member to United States. Only USD(P&R) may deny a request for delivery of a military member to Federal, state, or local civilian authorities for a felony or contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of a court or the custody of a person awarded custody by court order. A felony is a criminal offense punishable by incarceration for more than one year under the laws of the requesting

jurisdiction. Such requests should be forwarded through The Judge Advocate General (TJAG) and Air Force General Counsel (SAF/GC). TJAG may deny a request in all other cases. A GCMCA or commander designated under paragraph 1.1.3 may request a denial based on one or more of the following reasons:

- 1.2.1. Loss of the member from the unit would have an adverse impact on operational readiness or mission accomplishment.
- 1.2.2. An international agreement or other overriding legal requirement precludes the member's delivery.
- 1.2.3. The member is the subject of foreign judicial proceedings, a court-martial, or a United States military investigation such that the member cannot be immediately made available to civilian authorities.
- 1.2.4. The member has demonstrated that non-compliance with the court order that is the subject of the request for delivery is legally justified, or sanctioned by supplemental court orders, equally valid court orders of other jurisdictions, good-faith legal efforts to resist the original orders, or other legal reasons.

## 2. Request.

2.1. Federal, state, or local civilian authorities enforcing a court order may request delivery of a military member, employee, or family member.

2.1.1. An employee is a Department of Defense civilian employee, including a non-appropriated fund employee.

2.1.2. The Air Force expects military personnel, employees, and family members to comply with orders issued by Federal, state, and local courts of competent jurisdiction unless non-compliance is legally justified, meaning the apparent non-compliance is actually sanctioned by supplemental court orders, equally valid court orders of other jurisdictions, good-faith legal efforts to resist the original orders, or other legal reasons.

2.2. A request for delivery of a military member to Federal authorities must be accompanied by a warrant issued pursuant to Rule 4 of the Federal Rules of Criminal Procedure or a representation by a properly identified Federal marshal or agent that such a warrant has been issued.

2.3. A request for delivery of a military member to state or local authorities must be accompanied by a copy of the official document (e.g., warrant or court order) used by the requesting authorities to reflect the charges against the member.

2.4. On or before delivery of a military member to an officer or agent of the requesting civilian authorities, the requesting officer must execute an Acknowledgement and Agreement in substantially the form set out at [Attachment 2](#). The commander authorizing the delivery will ensure that a copy of the Acknowledgement and Agreement is provided to the member and the Air Force unit, activity, or recruiting office designated in the Acknowledgement and Agreement.

2.5. Every request by civilian authorities for a military member, employee, or family member located outside the United States must be immediately reported to AFLOA/JAJM,

1500 West Perimeter Road, Suite 1130, Joint Base Andrews Naval Air Facility Washington, Maryland, 20762, via telephonically and/or electronic mail message.

2.5.1. AFLOA/JAJM will ensure timely response to all requests and will coordinate actions by TJAG.

2.5.2. AFLOA/JAJM will notify and coordinate with SAF/GC, SAF/MR, Department of Defense General Counsel (DoD GC), and Under Secretary of Defense for Personnel and Readiness on any request for delivery of a military member located outside the United States or action under paragraph 6.

2.5.3. Civilian authorities requesting delivery of a military member located outside the United States may send the request directly to AFLOA/JAJM, in which case AFLOA/JAJM will immediately notify the member's commander and the servicing SJA in addition to making any other necessary notifications.

**3. Restraint or Confinement Pending Delivery.** A commander may restrain or confine a military member whose delivery has been requested by civilian authorities on receipt of information establishing probable cause that a member committed an offense, or upon reasonable belief the member committed the offense related to the request and reasonable belief that restraint or confinement is necessary.

3.1. The military member must be subject to the command of the officer ordering restraint or confinement and the Uniform Code of Military Justice (UCMJ).

3.2. To determine the existence of probable cause and a reasonable belief that restraint or confinement maybe necessary, the commander should consult with the servicing Staff Judge Advocate.

3.3. To determine the existence of probable cause and a reasonable belief that confinement is necessary, the commander shall refer to and follow Rule for Courts-Martial (R.C.M.) 305 (a) – (i), specifically, R.C.M. 305(h)(2)(B) and the discussion following it.

3.3.1. The offense related to the request need not be an offense triable by court-martial;

3.3.2. If the military member is not delivered to civilian authorities before the 48-hour, 72-hour and 7-day point, reviews are required.

3.4. Restraint or confinement may continue only as long as necessary to ensure delivery.

3.5. Detained service members who hold dual citizenship in the country in which they are detained or who are foreign national service members in the country in which they hold citizenship may have a right to communicate with their Consul. Those detaining the service member may have an obligation to notify the relevant Consul. Consult AFJI 51-707 for guidance.

**4. Release on Bail or Recognizance.**

4.1. By the Instruction Letter required under paragraph 1.1.4, the commander authorizing delivery of a military member to requesting civilian authorities directs the member to report to a designated Air Force unit, activity, or recruiting office in the event the member is released by the civilian authorities on bail or recognizance. The commander designates the member's unit of assignment if the unit is in close proximity to where the member is being held by the civilian authorities. Otherwise, the commander designates the Air Force unit,

activity, or recruiting office closest to where the member is being held, and the commander informs the designated Air Force unit, activity, or recruiting office of the situation.

4.2. On release by the civilian authorities, the military member will immediately report to the designated Air Force unit, activity, or recruiting office. The designated unit, activity, or recruiting office immediately sends the member's name, rank, Social Security Number, unit, and other pertinent information to the member's commander, who then provides instructions on the member's return. The member's commander notifies the servicing MPF of the member's pending return and the MPF, in turn, notifies AFPC/DPA.

**5. Requests For and Delivery of Military Personnel Located Within the United States Will Follow the Procedures at Paragraphs 1 and 2.**

5.1. "Located within the United States" is defined as physically present in one of the 50 states, District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, the United States Virgin Islands, or any commonwealth, territory, possession, or insular area of the United States.

5.2. With respect to interstate extradition, military personnel have the same status as nonmilitary personnel. Accordingly, if state or local civilian authorities located in one state request the delivery of a military member located in another state, the requesting civilian authorities must follow normal extradition procedures to arrange custody of the member in the state where the member is located. The Air Force should not transfer a military member to a base within one state to a base within another state for the sole purpose of making a member amenable to prosecution by civil authorities.

**6. Requests For and Delivery of Military Personnel Located Outside the United States.**

6.1. "Located outside the United States" is defined as physically present in an area other than one of the 50 states, District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, the United States Virgin Islands, or any commonwealth, territory, possession, or insular area of the United States.

6.2. A GCMCA, or an installation or equivalent commander designated by the GCMCA, may order a military member subject to his or her command to return expeditiously, at government expense, to an appropriate port of entry in the United States for delivery to requesting civilian authorities if the member has been convicted of, or charged with, a felony in a court, have been held in contempt for failure to obey a court's order, or have been ordered to show cause why the member should not be held in contempt for failing to obey a court order. DoD mission requirements, the provisions of applicable international agreements, and ongoing DoD investigations and courts-martial shall be considered when determining the degree of cooperation required.

6.2.1. A felony is a criminal offense punishable by incarceration for more than one year under the laws of the requesting jurisdiction, regardless of the sentence imposed for commission of the offense.

6.2.2. A warrant issued pursuant to Rule 4 of the Federal Rules of Criminal Procedure, a representation by a properly identified Federal marshal or agent that such a warrant has been issued, or a copy of the official document (e.g., warrant or court order) used by the requesting authorities to reflect the charges must accompany a request by civilian



authorities for a military member located outside the United States. The request must also indicate the following:

6.2.2.1. The United States port of entry where the authorities will take custody of the military member;

6.2.2.2. Whether interstate extradition, if necessary, has been arranged; and

6.2.2.3. That the authorities accept responsibility for costs associated with transporting the member from the port of entry to the requesting jurisdiction.

6.2.3. Before ordering the return of a military member to the United States, the GCMCA or designated commander will ensure that an attempt is made to resolve the matter to the satisfaction of the court without the return of the member and the member is allowed to provide evidence of legal efforts to resist the court order or show cause for non-compliance.

6.2.4. On or before ordering the return of a military member to the United States, the GCMCA or designated commander will notify the requesting civilian authorities of the military member's scheduled travel itinerary, including port of entry and date and time of arrival in the United States. Notification should be provided at least 10 days before the member's arrival.

6.2.5. Once the member has returned to the United States, the request will be processed in accordance with the procedures established in paragraphs 1 and 2.

6.3. The GCMCA or designated commander may request and TJAG may authorize a delay of not more than 90 days on a request for delivery of a military member located outside the United States to allow for efforts under paragraph 6.2.3 or consideration of a denial under paragraph 1.2.

## 7. Requests for Employees and Family Members.

7.1. Commanders ordinarily do not have authority to compel employees or family members to comply with court orders, but they will strongly encourage employees and family members to comply with court orders and cooperate with civilian authorities enforcing such orders.

7.2. Failure of an employee to comply with a court order may be the basis for adverse action against the employee. Failure of a family member located outside the United States to comply with a court order may be the basis for withdrawal of command sponsorship from the family member.

## ***Section B—Procedures For Notice, Training, And Coordination Under The Military Extraterritorial Jurisdiction Act (MEJA), 18 U.S.C. 3261 et seq.***

### 8. Notice of Potential United States Criminal Jurisdiction Under MEJA:

8.1. MEJA establishes a separate Federal offense under the United States Code for any act committed outside the United States that would constitute a felony-level Federal crime, the same as if such act had been actually committed within the Special Maritime and Territorial Jurisdiction of the United States, as defined in 18 U.S.C. § 7. MEJA applies to civilians employed by or accompanying the Armed Forces outside the United States, members of the

Armed Forces, and former members of the Armed Forces, including their dependents. These individuals may be returned to the United States for trial in Federal District Court. MEJA does not apply to host nationals but does apply to third-party nationals (those who are neither United States nor host nation nationals) who are employed by or accompanying the Armed Forces outside the United States. See [Attachment 3](#) for a detailed explanation of individuals to whom MEJA applies. If there is a conflict between the local Status of Forces Agreement (SOFA) and MEJA regarding exercise of jurisdiction, the SOFA takes priority.

8.2. MEJA provides that a person arrested under MEJA shall be delivered as soon as practicable to the custody of United States civilian law enforcement authorities for removal to the United States for related judicial proceedings. Military authorities will not remove that person to the United States or other foreign country except in limited circumstances. See [Attachment 4](#) for an explanation of those limited circumstances.

8.3. Close coordination and cooperation between the Department of Defense, the Department of Justice, and the Department of State are critical for successful investigations and prosecutions. The Domestic Security Section of the Criminal Division, Department of Justice (DSS/DOJ) is the Department of Justice section responsible for MEJA. DSS/DOJ will arrange for a Federal Magistrate Judge to preside over initial proceedings and assist in determining which United States Attorney's office will prosecute the case.

## 9. Responsibilities

### 9.1. Overseas Mission Support Squadron Commander (or Equivalent) Responsibilities:

9.1.1. Consult with the servicing Staff Judge Advocate regarding MEJA training.

9.1.2. Train all individuals to whom MEJA applies. These individuals are identified in paragraph [8.1](#). Training will include an explanation of MEJA, a review of persons to whom MEJA applies, and the right of a civilian suspect to have civilian counsel at initial proceedings, at no cost to the government.

9.1.3. Incorporate MEJA training into Newcomers' Orientation for both active duty and family members.

9.1.4. Incorporate MEJA training into New Employees' Orientation.

9.1.5. Inform contractors of any other Federal Agency, or any provisional authority, of these briefings and permit them to attend on a voluntary basis.

9.1.6. Assist the Installation Security Forces (SF) Commander and Air Force Office of Special Investigations (AFOSI) Commander in determining an accused's last known United States residence.

### 9.2. Overseas SF Commander and AFOSI Commander Responsibilities:

9.2.1. Notify the Commander of the Combatant Command and the Staff Judge Advocate, or designees, of an investigation of alleged MEJA violations that may lead to arrest or criminal prosecution. Provide such notice as soon as practicable.

9.2.2. SF shall temporarily detain persons ordered detained by the Commander of the Combatant Command or designee. Ask the detained person for information about his/her last residence in the United States as part of the initial intake questions. These persons shall be, to the extent practicable, detained in areas separate from sentenced military



prisoners and pre-trial confinees of the Armed Forces. Use separate temporary detention areas for men and women. There are detailed requirements in DoDI 5525.11 regarding detention of juveniles. Consult the Staff Judge Advocate to ensure compliance if the detained person is a juvenile.

9.2.3. Comply with applicable Federal civilian employee rights and entitlements, if any, regarding collective bargaining unit representation under 5 U.S.C. Chapter 71, during pretrial questioning and temporary detention procedures.

9.2.4. Brief local law enforcement authorities of investigations and arrests under MEJA. Prior to this briefing, consult with the Staff Judge Advocate to ascertain the Host Nation's position regarding the exercise of jurisdiction under MEJA and incorporate that information into the briefing.

9.2.5. Forward a copy of the Report of Investigation, or a summary, with an affidavit (see paragraph 13.3. below) to the Staff Judge Advocate of the Designated Commanding Officer (DCO) (as set out in AFJI 51-706).

9.2.6. Provide escorts and transfer detained persons to the custody of United States civilian law enforcement authorities, to appropriate authorities of the foreign country, or to the nearest United States military installation outside the United States adequate to temporarily detain the person and to facilitate the initial appearance (described in paragraph 10). For additional information see DoDI 5525.11, paragraphs 6.26. and 6.28.).

### 9.3. Overseas Staff Judge Advocate Responsibilities:

9.3.1. Upon receipt of notice of an investigation for a possible violation under MEJA, notify the DCO's Staff Judge Advocate; AFLOA/JAJM, 1500 West Perimeter Road, Suite 1130, Joint Base Andrews Naval Air Facility Washington, Maryland, 20762; and AF/JAO, 1420 Air Force Pentagon, Washington DC 20330-1420. AFLOA/JAJM will notify SAF/GC and DoD/GC.

9.3.2. Assist SF, AFOSI, and the Mission Support Squadron with required briefings. Train all newly assigned SF and AFOSI personnel within 30 days of arrival. This training will include an explanation of MEJA, a review of persons to whom MEJA applies, SF and AFOSI authority to make arrests pursuant to MEJA, and the requirement to include questions about last United States residence in routine booking questions.

9.3.3. Secure an affidavit from the criminal investigator working on the case detailing the probable cause basis for believing that a violation of MEJA has occurred and that the person identified in the affidavit committed the violation. Forward this affidavit with a copy of the Report of Investigation or summary simultaneously to the Combatant Commander's Staff Judge Advocate, the DCO's Staff Judge Advocate, AFLOA/JAJM, and DSS/DOJ.

9.3.4. Maintain a current list of local civilian attorneys licensed to practice law in the United States who are willing to provide representation to an accused at the initial proceedings. This list will contain a disclaimer stating that no endorsement by the United States government or the command is expressed or implied by the presence of the attorney's name on the list. Notify civilian defense counsel that their representation of persons under MEJA does not gain them DoD sponsorship or any diplomatic status.

9.3.5. Maintain a current list of military attorneys available in the command to provide limited representation at initial proceedings in the event civilian attorneys are not available. Provide this list to Federal Magistrate Judge on request. Coordinate with AFLOA/JAJD, 1500 West Perimeter Road, Suite 1300, Joint Base Andrews Naval Air Facility Washington, Maryland, 20762, prior to placing attorneys assigned to defense positions on the list.

9.3.6. Ensure the person arrested or charged signs the Acknowledgement of Limited Legal Representation ([Attachment 5](#)). Maintain the original in the legal office and give a copy to the military defense counsel.

9.3.7. Appoint a judge advocate or civilian attorney-advisor to act as a military representative. The military representative will assist command, law enforcement, United States Attorney representatives, and the Federal Magistrate Judge during pretrial matters, initial proceedings, and other procedures required by MEJA and DoDI 5525.11.

9.3.8. Arrange for videoconferencing support for the initial proceedings. If videoconferencing is unavailable, arrange telephone conferencing.

9.3.9. Each base legal office will forward a report to AFLOA/JAJM, 1500 West Perimeter Road, Suite 1130, Joint Base Andrews Naval Air Facility Washington, Maryland, 20762, detailing all cases involving the arrest of persons for violations of MEJA; persons placed in temporary detention for violations of MEJA; the number of requests for Federal prosecution under MEJA, and the decisions made regarding such requests. This report covers the preceding calendar year and is due to AFLOA/JAJM on 15 February.

#### 9.4. AFLOA/JAJM Responsibilities:

9.4.1. Serve as a liaison between base legal offices, command legal offices, SAF/GC, DoD/GC, and DSS/DOJ as necessary.

9.4.2. Forward annual report to DoD/GC through SAF/GC. Report is due to DoD/GC on the last day of February.

### 10. Temporary Detention

10.1. The Commander of a Combatant Command may order the temporary detention of a person within the commander's area of responsibility outside of the United States, who is arrested or charged with a violation of MEJA. The Commander of a Combatant Command should order temporary detention only when there is serious risk the person shall flee or engage in serious criminal misconduct. SF shall temporarily detain persons ordered detained by the Commander of the Combatant Command in accordance with procedures in paragraph [9.2](#). SF personnel will ask the detained person for information about his/her last residence in the United States as part of the initial intake. See DoDI 5525.11 for specific guidance and requirements.

10.2. The Commander of a Combatant Command may designate Component or DCO commanders to order temporary detention under MEJA in accordance with DoDI 5525.11.

### 11. Initial Proceedings

11.1. Initial proceedings before a Federal Magistrate Judge are required when a person is arrested or detained by United States military authorities under MEJA while overseas and currently employed by or accompanying the Armed Forces.

11.2. During initial proceedings a Federal Magistrate Judge will determine whether probable cause exists to believe that an offense under MEJA has been committed and that the identified person committed it. Initial proceedings will also include a detention hearing, as appropriate.

11.3. Initial proceedings will be conducted within 48 hours of arrest to comply with *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991).

**12. Witness Testimony by Former or Current Air Force Personnel**

12.1. AFI 51-301, Section 9C provides guidance for the approval and routing of witness requests from DOJ, including those relating to criminal proceedings convened pursuant to MEJA.

12.2. Air Force personnel appearing as witnesses for the United States in criminal proceedings convened pursuant to MEJA whose travel is addressed by the provisions of AFI 51-301, paragraph 9.23.3., may be funded by AFLOA/JAJM central witness funding.

**Section C—Procedures for Jurisdiction, Command Law Enforcement Authority, Notice, and Courts-Martial for DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations (Article 2(a)(10), UCMJ)**

**13. Article 2(a)(10) Jurisdiction.** Only the Secretary of Defense (SECDEF) possesses the authority to exercise court-martial convening authority and impose nonjudicial punishment (NJP) over persons subject to Article 2(a)(10) with respect to: offenses committed within the "United States," meaning the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States; persons who were not at all times during the alleged misconduct located outside the "United States," as defined above; and persons who are, at the time court-martial charges are preferred or notice of NJP proceedings is given, located within the "United States," as defined above. See SECDEF Memorandum dated 10 Mar 08, "*UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations.*"

13.1. Only SECDEF, geographic combatant commanders (CCDRs), and commanders assigned or attached to geographic combatant commands who also possess GCMCA may exercise court-martial convening authority and impose NJP over persons subject to Article 2(a)(10) with respect to offenses committed outside the "United States," as defined in paragraph **13**. Geographic CCDRs may withhold this authority within their command.

13.2. Authority to prefer court-martial charges and offer NJP is withheld until the notification requirements outlined in paragraph **16** are accomplished. Law enforcement, criminal investigations, and other military justice procedures that precede the preferral of court-martial charges should continue, as applicable, during this notification process.

13.3. Authority to prefer court-martial charges and offer NJP is withheld whenever DOJ provides notice that it intends to pursue federal criminal prosecution for what is substantially the same offense or a related offense, and such withholding of authority shall remain in effect while DOJ is pursuing its federal prosecution of the case until such prosecution is completed or terminated prior to its completion.

**14. Command Law Enforcement Authority.** Commanders at all levels have the authority to investigate any crime allegedly committed by persons subject to the UCMJ, as well as persons subject to MEJA jurisdiction until such time as civilian law enforcement officials have assumed sole investigative responsibility. Such investigations shall be conducted in accordance with recognized practices with host nation authorities, applicable international law, and international agreements.

14.1. Apprehension and Arrest. Military law enforcement officers and military criminal investigators are authorized to apprehend persons subject to UCMJ jurisdiction, and arrest and temporarily detain persons subject to MEJA jurisdiction, when there is probable cause that an offense has been committed and that the person committed it, subject to the requirements of Rules for Court-Martial (RCM) 304 and 305. Although all commissioned, warrant, petty, and noncommissioned officers on active duty may apprehend persons subject to UCMJ jurisdiction, absent exigent circumstances, the apprehension of civilians should be done by law enforcement personnel.

14.2. Pretrial Restraint and Confinement. Commanders may order the pretrial restraint or confinement of civilians subject to the limitations of RCM 304(b) and all applicable provisions of the Manual for Courts-Martial (MCM) and AFI 51-201, *Administration of Military Justice*. Absent exigent circumstances, Article 2(a)(10) personnel shall not be placed in pretrial restraint or confinement without first consulting with the SJA of the appropriate geographic CCDR.

**15. Command Discretion.** The unique nature of exercising UCMJ jurisdiction over civilians requires commanders to evaluate legal and policy considerations before initiating any punitive disciplinary action. If a commander at any level determines UCMJ action is not warranted under the circumstances, no further action is required under this Chapter.

15.1. Legal Considerations. Article 2(a)(10) applies to individuals serving with or accompanying the Air Force, Army, Navy, Marines, or Coast Guard in the field during declared war or contingency operations. This generally includes DoD civilian employees and contractors, as well as individuals who are dependent on or connected to the armed forces in some manner. (*See United States v. Burney*, 21 C.M.R. 98 (1956); *Perlstein v. United States et al*, 151 F. 2d. 167 (3d Cir. 1945).) It can also include both U.S. citizens and foreign nationals, but international agreements will likely impact punitive action against any foreign national. Before taking any steps to initiate UCMJ action, it is critical to establish that Article 2(a)(10) jurisdiction applies.

15.2. Policy Considerations. Even if an individual is legally subject to the UCMJ, as a matter of policy the exercise of jurisdiction under Article 2(a)(10) must also be based on military necessity to support an effective fighting force and be called for by circumstances that meet the interests of justice, such as when federal criminal jurisdiction otherwise does not apply or federal criminal prosecution is not pursued, and/or when the person's conduct is adverse to a significant military interest of the United States (e.g.,

alleged misconduct that may jeopardize good order and discipline or discredit the armed forces and thereby have a potential adverse effect on military operations).

**16. Notification Requirements and Procedures.** Before initiating any disciplinary action against any person under Article 2(a)(10), commanders, through their SJAs, shall comply with the notification procedures outlined below.

16.1. General Requirements. All levels of command must follow the notification requirements of DoD Instruction 5525.11 and DTM 09-015 in all cases intended to be pursued under Article 2(a)(10), to include forwarding all reasonably available information regarding the investigation, the suspect's last known residence in the United States, and the reasoning in support of a UCMJ disposition.

16.2. Non-GCMCA Notification Requirements. Commanders who are not GCMCAs shall, before initiating any UCMJ disposition under RCMs 306-308 or 401-406, forward expeditiously all available information regarding the alleged misconduct that is potentially subject to this jurisdiction to the first GCMCA in the chain of command that is attached or assigned to a geographic combatant command.

16.3. GCMCA Notification Requirements. GCMCAs assigned or attached to a geographic combatant command shall notify in writing (including by email or facsimile) their respective geographic CCDR of their intended disposition by court-martial or NJP over persons subject to Article 2(a)(10).

16.4. CCDR Notification Requirements. Before preferring court-martial charges or offering NJP based on Article 2(a)(10), and regardless of whether the suspected offense may also be an offense under federal criminal laws, the geographic CCDR commander shall first provide notice of the case in writing (including by email or facsimile) in accordance with the procedures established in DoD Instruction 5525.11 through DoD channels so that DOJ may be afforded the opportunity to pursue federal criminal prosecution.

16.5. DOJ-DoD Notification Requirements. After DoD's formal notification to DOJ, DOJ shall expeditiously (but in no case longer than 14 calendar days absent an extension) notify DoD whether it intends to exercise jurisdiction over the case. If DOJ elects to exercise jurisdiction over the case, authority to convene a court-martial or administer NJP is withheld. If DOJ does not exercise jurisdiction or terminates prosecution, or if permission to proceed is granted by SECDEF or his designee, UCMJ action may be initiated.

**17. Court-Martial Rights and Procedures.** The MCM ensures a fair trial and due process of law for all persons tried before a properly constituted court-martial. The following clarifications will assist all parties with interpreting the MCM and applicable regulations.

17.1. Military Defense Counsel. An accused under Article 2(a)(10) has the same rights to counsel as a military accused, including the right to be represented by a detailed military defense counsel, the right to request an individual military defense counsel, and the right to be represented by a civilian defense counsel at no expense to the government.

17.2. Court Members. Any commissioned officer on active duty is eligible to serve on a court-martial for the trial of any accused under Article 2(a)(10). A convening authority

may, but is not required to, consider rank equivalencies when selecting officer members for an accused who holds a federal civilian position. An accused under Article 2(a)(10) does not have the right to request enlisted court members.

17.3. Punishments. Subject to the limitations of the MCM, a court-martial may adjudge only the following punishments for an accused under Article 2(a)(10): reprimand, fine, restriction to specified limits, confinement, and death.

\*RICHARD C. HARDING  
Lieutenant General, USAF



**Attachment 1****COMMANDER'S INSTRUCTION LETTER TO MEMBER**

MEMORANDUM FOR (Member's name and rank)

FROM: (Commander's name and rank)

SUBJECT: Instructions in Case of Release by Civilian Authorities

1. You are being delivered to civilian authorities pursuant to court order and Air Force Instruction (AFI) 51-1001, *Delivery of Personnel to United States Civilian Authorities for Trial*. This action does not constitute a discharge from the Air Force.
2. In the event of your release by civilian authorities on bail, your own recognizance, or other circumstances, you must immediately report in person or by telephone to (designated Air Force unit, activity, or recruiting office, address, and commercial telephone number). Advise (designated Air Force unit, activity, or recruiting office) of your name, rank, Social Security Number, and unit and provide the circumstances of your release and a copy of this memorandum. If the civilian authorities have imposed restrictions in connection with your release, include those restrictions in your report. If you are unable to contact (designated Air Force unit, activity, or recruiting office), report to the nearest Air Force Military Personnel Flight.
3. In accordance with AFI 51-1001, paragraph 4., (designated Air Force unit, activity, or recruiting office) will notify your commander of your release and receive instructions on your return to your unit.

(Commander's signature element)

**Attachment 2****ACKNOWLEDGEMENT BY CIVILIAN AUTHORITIES OF DELIVERY AND  
AGREEMENT TO NOTIFY COMMANDER OF MEMBER'S RELEASE**

On behalf of (Federal, state, or local civilian authorities requesting delivery of military member), I hereby acknowledge the delivery of (military member's name, rank, and Social Security Number) pursuant to the enforcement of an order issued by (Federal or state court of competent jurisdiction). A copy of the order and supporting documentation are attached.

In accordance with the authority vested in me by and on behalf of (Federal, state, or local civilian authorities or Federal or state court of competent jurisdiction), I agree to the following:

(Commander's name, rank, unit, address, and commercial telephone number) will be kept informed of the status of the case involving (member's name and rank) and immediately notified should (member's name and rank) be released from custody for any reason, including but not limited to release on bail or own recognizance, acquittal, dismissal of charges, or satisfaction of sentence.

On release from custody, (member's name and rank) will be immediately returned to (designated Air Force unit, activity, or recruiting office, address, and commercial telephone number) or another location designated by the Air Force. (Member's name and rank) will not be returned to the Air Force only if the Air Force informs (Federal, state, or local civilian authorities) that return is not appropriate.

(Signature element of officer or agent of requesting  
Federal, state, or local civilian authorities)

**Attachment 3****EXCERPT OF DODI 5525.11***Criminal Jurisdiction Over Civilians Employed By or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members*

Paragraphs 6.1.2 through 6.1.9

6.1.2. Persons Subject to this Instruction. This Instruction applies to certain members of the Armed Forces, former members of the Armed Forces, and persons employed by or accompanying the Armed Forces outside the United States, and their dependents, as those terms are defined in enclosure 2 and referenced below, who are alleged to have committed an offense under the Act while outside the United States. For purposes of the Act and this Instruction, persons employed by or accompanying the Armed Forces outside the United States are subject to the "military law" of the United States, but only to the extent to which this term has been used and its meaning and scope have been understood within the context of a SOFA or any other similar form of international agreement.

6.1.3. Members of the Armed Forces. Members of the Armed Forces subject to the Act's jurisdiction are:

6.1.3.1. Only those active duty members of the Armed Forces who, by Federal indictment or information, are charged with committing an offense with one or more defendants, at least one of whom is not subject to the UCMJ. (See Section 3261(d)(2) of the Act.)

6.1.3.2. Members of a Reserve component who commit an offense when they are not on active duty or inactive duty for training (in the case of members of the Army National Guard or the Air National Guard of the United States, only when in Federal service) are not subject to UCMJ jurisdiction for that offense and, as such, are amenable to the Act's jurisdiction disregarding the limitation of Section 3261(d)(2) of the Act.

6.1.4. Former Members of the Armed Forces. Former members of the Armed Forces subject to the Act's jurisdiction are:

6.1.4.1. Former members of the Armed Forces who were subject to the UCMJ at the time the alleged offense was committed, but are no longer subject to the UCMJ with regarding that offense because of their release or separation from active duty.

6.1.4.2. Former members of the Armed Forces, having been released or separated from active duty, who thereafter allegedly commit an offense overseas while in another qualifying status (such as while a civilian employed by or accompanying the Armed Forces outside the United States, the dependent of a civilian employed by or accompanying the Armed Forces, or the dependent of a person subject to the UCMJ).

6.1.5. Civilians Employed by the Armed Forces. Persons who are not a national of or resident in the host nation, who are employed by the U.S. Armed Forces outside the United States (as defined in enclosure 2), and who commit an offense under the Act while present or residing outside the United States in connection with such employment, are subject to the Act and the provisions of this Instruction. Such civilian employees include:

6.1.5.1. Persons employed by the Department of Defense (including a non-appropriated fund instrumentality of the Department of Defense).

6.1.5.2. Persons employed as a DoD contractor (including subcontractor(s) at any tier).

6.1.5.3. Employees of a DoD contractor (including subcontractor(s) at any tier).

6.1.5.4. Civilian employees, contractors (including subcontractor(s) at any tier), and civilian employees of a contractor (or subcontractor(s) at any tier) of any other Federal Agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas.

6.1.6. Civilians Accompanying the Armed Forces. Subject to the requirements of subparagraph 6.1.6.2., the following persons are civilians accompanying the Armed Forces outside the United States who are covered by the Act and the provisions of this Instruction:

6.1.6.1. Dependents of:

6.1.6.1.1. Active duty members of the Armed Forces.

6.1.6.1.2. Members of the Reserve component while the Service member was on active duty or inactive duty for training, but in the case of members of the Army National Guard or the Air National Guard of the United States, only when in Federal service.

6.1.6.1.3. Former members of the Armed Forces who are employed by or are accompanying the Armed Forces outside the United States.

6.1.6.1.4. Civilian employees of the Department of Defense (including non-appropriated fund instrumentalities of the Department of Defense).

6.1.6.1.5. DoD contractors (including subcontractor(s) at any tier).

6.1.6.1.6. Employees of a DoD contractor (including subcontractor(s) at any tier).

6.1.6.2. In addition to the person being the dependent of a person who is listed in subparagraph 6.1.6.1., jurisdiction under the Act requires that the dependent also:

6.1.6.2.1. Reside with one of the persons listed in subparagraph 6.1.6.1.

6.1.6.2.2. Allegedly commit the offense while outside the United States;  
and

6.1.6.2.3. Not be a national of, or ordinarily resident in, the host nation where the offense is committed.

6.1.6.3. Command sponsorship of the dependent is not required for the Act and this Instruction to apply.

6.1.6.4. When the dependent is a juvenile, as defined in section 153.3 of the Act, who engaged in conduct that is subject to prosecution under Section 3261(a) of the Act, the provisions of chapter 403 of title 18, United States Code would apply to U.S. District Court prosecutions.

6.1.7. Persons NOT Subject to the Act or the Procedures of this Instruction

6.1.7.1. Persons who are the nationals of, or resident in, the host nation where the offense is committed, regardless of their employment or dependent status.

6.1.7.2. Persons who have recognized dual citizenship with the United States and who are the nationals of, or resident in, the host nation where the offense is committed are not persons "accompanying the Armed Forces outside the United States" within the meaning of the Act and this Instruction.

6.1.7.3. Persons, including citizens of the United States who, at the time the offense was committed outside the United States, were not members of the Armed Forces, civilian employees of the Armed Forces outside the United States, or civilians accompanying the Armed Forces outside the United States.

6.1.7.3.1. Persons (including members of a Reserve component) whose presence outside the United States at the time the offense is committed, is solely that of a tourist, a student, or a civilian employee or civilian accompanying some other non-Federal Agency, organization, business, or entity (and thereby may not be said to be employed by or accompanying the Armed Forces within the definitions of those terms as established by the Act, as modified) are not subject to the Act. Civilian employees of an agency, organization, business, or entity accompanying the Armed Forces outside the United States may, by virtue of the agency, organization, business, or entity relationship with the Armed Forces, be subject to the Act and this Instruction.

6.1.7.3.2. Persons who are subject to the Act and this Instruction remain so while present, on official business or otherwise (e.g., performing temporary duty or while in leave status), in a foreign country other than the foreign country to which the person is regularly assigned, employed, or accompanying the Armed Forces outside the United States.

6.1.7.4. Juveniles whose ages are below the minimum ages authorized for the prosecution of juveniles in U.S. District Court under the provisions of chapter 403 of title 18, United States Code.

6.1.7.5. Persons subject to the UCMJ (see Sections 802 and 803 of title 10, United States Code) are not subject to prosecution under the Act unless, pursuant to Section 3261(d) of the Act, the member ceases to be subject to the UCMJ or an indictment or information charges that the member committed the offense with one or more other defendants, at least one of whom is not subject to the UCMJ. Retired members of a regular component who are entitled to pay remain subject to the UCMJ after retiring from active duty. A member of the Reserve component who commits a UCMJ offense while serving on active duty or inactive duty training is subject to the UCMJ and is not, by virtue of the termination of a period of active duty or inactive-duty training, relieved from amenability to UCMJ jurisdiction for that offense. Such retired members of a regular component and members of the Reserve components are not subject to prosecution under the Act unless Section 3261(d)(2) of the Act applies. In addition, other provisions of Sections 802 and 803 of title 10, United States Code should be considered to determine whether the person should be arrested or charged with a violation of Section 3261 of the Act.

6.1.8. The U.S. Coast Guard. Whether Coast Guard members and civilians employed by or accompanying the Coast Guard outside the United States, and their dependents, are subject to the Act and this Part depends on whether at the time of the offense the Coast Guard was operating as a separate Service in the Department of Homeland Security or as a Service in the Department of the Navy.

6.1.9. Persons Having a Tenuous Nexus to the United States. Third Country Nationals who are not a resident in the host nation, and who meet the definition of "a person accompanying the Armed Forces outside the United States," may have a nexus to the United States that is so tenuous that it places into question whether the Act's jurisdiction should be applied and whether such persons should be subject to arrest, detention, and prosecution by U.S. authorities. Depending on the facts and circumstances involved, and the relationship or connection of the foreign national with the U.S. Armed Forces, it may be advisable to consult first with the DSS/DOJ before taking action with a view toward prosecution. In addition, to facilitate consultation with the government of the nation of which the Third Country National is a citizen, the DoS should be notified of any potential investigation or arrest of a Third Country National.



**Attachment 4****EXCERPT OF DODI 5525.11***Criminal Jurisdiction Over Civilians Employed By or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members***Paragraph 6.5****6.5. Removal of Persons to the United States or Other Countries**

6.5.1. In accordance with the limitation established by Section 3264 of the Act, military authorities shall not remove, to the United States or any other foreign country, a person suspected of violating Section 3261(a) of the Act, except when:

6.5.1.1. The person's removal is to another foreign country in which the person is believed to have committed a violation of Section 3261(a) of the Act; or

6.5.1.2. The person is to be delivered, on request, to authorities of a foreign country under Section 3263 of the Act and subparagraph 6.2.8., or

6.5.1.3. The person is arrested or charged with a violation of the Act and is entitled to, and does not waive, a preliminary examination under Federal Rule of Criminal Procedure 5.1, in which case the person shall be removed to the United States for such examination; or

6.5.1.4. The person's removal is ordered by a Federal Magistrate Judge (see paragraph 6.5.2. of this Instruction); or

6.5.1.5. The Secretary of Defense, or designee, directs the person be removed, as provided in Section 3264(b)(5) of the Act and subparagraph 6.5.3. of this Instruction.

6.5.2. Removal by Order of a Federal Magistrate Judge. The Military authorities may remove a person suspected of violating Section 3261(a) of the Act to the United States when:

6.5.2.1. A Federal Magistrate Judge orders that the person be removed to the United States to be present at a detention hearing; or

6.5.2.2. A Federal Magistrate Judge orders the detention of the person prior to trial (see Section 3142(e) of Title 18, United States Code, in which case the person shall be promptly removed to the United States for such detention); or

6.5.2.3. A Federal Magistrate Judge otherwise orders the person be removed to the United States.

6.5.3. Removal by Direction of the Secretary of Defense or Designee. The Secretary of Defense, or designee, may order a person's removal from a foreign country within the

Combatant Command's geographic area of responsibility when, in his sole discretion, such removal is required by military necessity. (See Section 3264(b)(5) of the Act.) Removal based on military necessity may be authorized to take into account any limiting factors that may result from military operations, as well as the capabilities and conditions associated with a specific location.

6.5.3.1. When the Secretary of Defense, or designee, determines that a person arrested or charged with a violation of the Act should be removed from a foreign country, the person shall be removed to the nearest U.S. military installation outside the United States where the limiting conditions requiring such a removal no longer apply, and where there are available facilities and adequate resources to temporarily detain the person and conduct the initial proceedings required by the Act and this Instruction.

6.5.3.2. The relocation of a person under this subparagraph does not authorize the further removal of the person to the United States, unless further removal is authorized by an order issued by a Federal Magistrate Judge under subparagraph 6.5.2.

6.5.3.3. Delegation. The Commander of a Combatant Command, and the Commander's principal assistant, are delegated authority to make the determination, based on the criteria stated in subparagraph 6.5.3., that a person arrested or charged with a violation of the Act shall be removed from a foreign country under Section 3264(b)(5) of the Act and this Instruction. Further delegation is authorized, but the delegation of authority is limited to a subordinate Commander within the command who is designated as a general court-martial convening authority under the UCMJ.

6.5.4. A person who is removed to the United States under the provisions of the Act and this Instruction and who is thereafter released from detention, and otherwise at liberty to return to the location outside the United States from which he or she was removed, shall be subject to any requirements imposed by a Federal District Court of competent jurisdiction.

6.5.5. Where a person has been removed to the United States for a detention hearing or other judicial proceeding and a Federal Magistrate Judge orders the person's release and permits the person to return to the overseas location, the Department of Defense (including the Military Department originally sponsoring the person to be employed or to accompany the Armed Forces outside the United States) shall not be responsible for the expenses associated with the return of the person to the overseas location, or the person's subsequent return travel to the United States for further court proceedings that may be required.

**Attachment 5****ACKNOWLEDGEMENT OF LIMITED LEGAL REPRESENTATION**

1. I, \_\_\_\_\_, have been named as a suspect or defendant in a matter to which I have been advised is subject to the jurisdiction of the Military Extraterritorial Jurisdiction Act of 2000 (Section 3261, et. seq., of title 18, United States Code); hereinafter referred to as "the Act." I have also been informed that certain initial proceedings under 18 U.S.C. § 3265 may be required under this Act, for which I am entitled to be represented by legal counsel.

2. I acknowledge and understand that the appointment of military counsel for the limited purpose of legal representation in proceedings conducted pursuant to the Act is dependent upon my being unable to retain civilian defense counsel representation for such proceedings, due to my indigent status, and that qualified military defense counsel has been made available.

3. Pursuant to the Act, \_\_\_\_\_, a Federal Magistrate Judge, has issued the attached Order and has directed that military counsel be made available:

\_\_\_\_ For the limited purpose of representing me at an initial proceeding to be conducted outside the United States pursuant to 18 U.S.C. § 3265.

\_\_\_\_ For the limited purpose of representing me in an initial detention hearing to be conducted outside the United States pursuant to 18 U.S.C. § 3265(b).

4. \_\_\_\_\_, military counsel, has been made available in accordance with DoD Instruction 5525.11 and as directed by the attached Order of a Federal Magistrate Judge.

5. I (do) (do not) wish to be represented by \_\_\_\_\_, military counsel \_\_\_\_\_ (initials).

6. I understand that the legal representation of \_\_\_\_\_, military counsel, is limited to:

a. Representation at the initial proceedings conducted outside the United States pursuant to 18 U.S.C. § 3265. \_\_\_\_\_ (Initials)

b. The initial detention hearing to be conducted outside the United States pursuant to the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. § 3261, et. seq.). \_\_\_\_\_ (Initials)

c. Other proceedings (Specify):

\_\_\_\_\_. \_\_\_\_\_ (Initials)

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Signature of Person To Be Represented By Military Counsel

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Signature of Witness\*

Attachment:  
Federal Magistrate Judge Order

(\*Note: The witness must be a person other than the defense counsel to be made available for this limited legal representation.)

## Attachment 6

**\*EXCEPRT OF DTM 09-015**

*\*Policy and Procedures Applicable to DoD and United States Coast Guard (USCG) Civilian Personnel Subject to the Uniform Code of Military Justice (UCMJ) Jurisdiction in Time of Declared War or a Contingency Operation*

**\*GLOSSARY**

Armed Forces. Defined in section 101(4) of Reference (b).

\*contingency operation. Defined in section 101(a)(13)(A) or 101(a)(13)(B) of Reference (b).

\*covered civilian employee. A DoD Component civilian employee who, pursuant to References (a) and (b), becomes subject to military UCMJ jurisdiction during a declared war or a qualifying contingency operation, when serving with or accompanying the Armed Forces in the field.

\*declared war. A term that has been judicially construed to mean a congressionally-declared war. (See Analysis to Rule 202, Appendix 21, “Analysis of Rules for Courts-Martial,” of Reference (e).)

\*DoD Component civilian employee. DoD and USCG civilian employees (including the Coast Guard at all times, including when it is a Service in the DHS by agreement with that Department), including civilians paid with non-appropriated funds, direct and indirect hire foreign national employees, other U.S. Government personnel assigned or detailed under an arrangement in accordance with sections 3371-3375 of title 5, U.S.C. (also known as “the Intergovernmental Personnel Act” (Reference (h))), and military technicians if working in their civilian capacity.

\*in the field. A term judicially construed to mean a military operation with a view toward engaging the enemy or a hostile force. It is not determined by the locality in which the Armed Force is found, but rather by the activity in which the Armed Force is engaged. (See Analysis to Rule 202, Appendix 21, “Analysis of Rules for Courts-Martial,” of Reference (e).)

\*qualifying contingency operation. For the purposes of Article 2(a)(10), UCMJ, jurisdiction, a contingency operation, which by its purpose meets the Glossary definition of “in the field.”

\*serving with or accompanying an Armed Force. Terms judicially construed, as explained in the Analysis to Rule 202, Appendix 21, of Reference (e), to mean a connection with or dependence upon the activities of the Armed Forces or its personnel. A person’s presence must be more than merely incidental. A person may be

“accompanying” an Armed Force although not directly employed by it or the Government. A person “accompanying” an Armed Force may be “serving with” it as well, but the distinction is important because even though a civilian’s contract with the Government ended before the commission of an offense, and hence the person is no longer “serving with” an Armed Force, jurisdiction may remain on the basis that the person is “accompanying” an Armed Force because of his or her continued connection with the military.

\*subject to this chapter. A general term used in the UCMJ and Reference (e) to refer to persons who are subject to UCMJ jurisdiction (Reference (b)).

\*United States. As defined in Reference (c), the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States.